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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 000985

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SUBJECT: NEW ELECTORAL LAW ADVANTAGES MAJORITY (CHAVISTA)  
RULE

REF: CARACAS 00681

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Classified By: ACTING POLITICAL COUNSELOR DARNALL STEUART,  
FOR REASON 1.4(D)

¶1. (C) Summary: The National Assembly (AN) is poised to pass the Organic Law of Electoral Processes (LOPE) by mid-August, at the height of the Venezuelan vacation season, amidst little public protest. The bill would institutionalize practices that tilt the electoral playing field to greatly advantage majority parties, notably the United Socialist Party of Venezuela (PSUV), and place nearly all decision-making authority into the hands of the Chavista-dominated National Electoral Council (CNE). Contacts contend that the law's objective is to maintain or increase PSUV dominance in local, state, and national legislatures. Opposition officials note that most Venezuelans are ill-informed or uninterested in the complex electoral issues up for debate, and they acknowledge they have no short-term plans to challenge the legislation. End Summary.

¶2. (C) The state-owned Bolivarian News Agency reported July 23 that LOPE would be submitted to its final vote by mid-August. The Government of the Bolivarian Republic of Venezuela (GBRV) has openly supported the idea that the "majority should rule," ignoring criticism from its small party allies. As of late July, the pro-government Patria Para Todos (PPT) party remained publicly opposed to the law, suggesting a potentially permanent schism between PPT and the PSUV. LOPE will replace the Organic Law of Suffrage and Participation that was passed in 1998, before the constitution was redrafted the following year.

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MAJORITY RULES  
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¶3. (C) Un Nuevo Tiempo's electoral expert, Henrique Marquez, told Poloffs July 23 that Chavez will use LOPE to "strangle" the opposition. He contended that in contrast to the education, social property, and criminal code bills (Septel), LOPE is the only one of the four that Chavez can implement with little political cost. Marquez called LOPE a "boomerang" for the opposition that will come back to hurt them -- because its passage is virtually assured, opposition criticism of the law is most likely to result in declining participation among opposition voters who lose confidence in the electoral system. Marquez admitted that the public does not really care about LOPE's passage because the average Venezuelan doesn't understand the complicated electoral issues and will not feel its direct impact, unlike the

education law. Marquez added that if the opposition complains, the public perception is that the parties are simply trying to protect their ability to get elected. He said that to be effective, the opposition message should be that this is a "coward's law" that shows Chavez's weakness and declining popularity. Opposition Mayor of Baruta municipality Gerardo Blyde echoed Marquez's comments July 28, telling Poloffs that he could not tell his electorate to go to the polls if their votes would not count.

14. (C) The most hotly debated aspect of LOPE is its shift away from proportional representation and towards a list (first-past-the-post) system that greatly advantages big parties over smaller ones (Reftel). According to Marquez, the law would institutionalize "morochas" ("twins"), a complicated system that basically allows a single party to list itself under more than one name to gain a disproportionate number of the seats up for grabs. Marquez used the state legislature in Falcon State as an example -- although opposition parties achieved 38 percent of the vote in the last election, they did not claim any seats. The same scenario occurred in Guarico, Bolivar, Cojedes, and Barinas States. Marquez acknowledged that the opposition could use this to its advantage in the wealthy urban areas where it enjoys a majority. However, he cautioned that Chavez could even preclude that advantage by pushing the CNE to redistrict opposition areas to dilute their majority. For example, they could shift the district borders of the Sucre municipality of Caracas -- which contains the emblematic Petare barrio -- to exclude the middle-class neighborhoods that helped to elect opposition mayor Carlos Ocariz in November 2008.

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IT'S ALL UP TO THE CNE  
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15. (C) Electoral experts warn that LOPE would grant the CNE unprecedented discretion to make and change rules that govern all aspects of elections, opening the door to confusion and politicization as the CNE can alter its regulations on a whim. Legal experts note that the current electoral law, in contrast to LOPE, is very specific in laying out certain guidelines that the CNE was required to follow. Chavez and the CNE flaunted the law with impunity particularly in the run up to the February 2009 referendum, but the opposition at least had standing to go on record in challenging each extralegal maneuver and violation of the constitution -- even if the Chavista-dominated judiciary and CNE ignored their complaints. The government has argued that LOPE will bring the old law up-to-date and grants the CNE flexibility to address flaws in the electoral system. Our contacts warn that the LOPE is confusing, poorly written, and that CNE's reputation for subservience to Chavez will damage public confidence in the transparency and secrecy of the ballot.

16. (C) Electoral law expert Gabriel Matute warned Poloff July 22 that the LOPE would shift responsibility to the CNE in the following ways:

-- The CNE will regulate the electoral registry (REP), including how and when voters are inscribed, and determine on a case-by-case basis who has the "legitimate interest" required to challenge the REP. There is no timeline for when the CNE must respond to challenges.

-- The CNE decides how and when a candidate can be substituted, without limitations. In theory, this could occur the day before an election without requirements to notify the public of the change.

-- The CNE has blanket authority to convoke and regulate the details of elections, including when the polls open and close, and can place voting sites in any location they choose. Only the voting site can close an electoral "table"

(voting booth); if a site with dozens of tables has just one person in line, all the tables must stay open.

-- The CNE has the discretion to determine what "electoral crimes" are and is charged with overseeing "obligatory electoral service." LOPE makes mention of these requirements but provides no specifics.

-- The CNE sets electoral timelines as it sees fit, without any stipulated limitations on timing. Similarly, LOPE would legalize Gerrymandering by allowing the CNE to revise the geographic borders for constituencies at all levels of government, and from election to election.

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VOTER CONFIDENCE AT RISK  
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17. (SBU) Electoral specialist Dashiell Lopez, from the SUMATE civil society group, told Poloffs July 16 that LOPE does not include several norms that have become standard practice over the past decade of elections to allay public concern over the vote's increasing automation. For example, currently 54.6 percent of ballot boxes are audited and the voting results from the Smartmatic machines are printed at the end of the election day before being electronically transmitted -- both measures aimed at improving the perception of transparency. It is also common practice to disconnect the finger-printing machines from the voting machinery to assuage voters' fears regarding the secrecy of the ballot. The LOPE, however, simply stipulates that the CNE will regulate some degree of auditing and "implement a system of voter identity authenticity." No mention is made of printing the results prior to transmission. LOPE institutionalizes the use of fingerprinting machines but does not lay out regulations, giving the CNE complete discretion over their usage.

18. (C) Matute asserted that the presence of well-trained poll workers and voter "witnesses" ("testigos") is the most important measure for protecting the vote. LOPE mentions poll workers, but does not specify how or by what standards they are chosen. The current legislation grants a preference to poll workers with professional and previous electoral experience, presumably lessening errors and encouraging voter confidence. Dashiell noted that it takes more than a single 3-hour class given by the CNE to learn the intricacies of how to run an electoral table in compliance with the law.

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COMMENT  
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19. (C) Concerned about maintaining his overwhelming control of state legislatures and the National Assembly, Chavez has pushed forward a law that he calculates will advantage his PSUV sufficiently to maintain his much-needed two-thirds majorities. The opposition, meanwhile, seems frustrated and at a loss over how to counter the bill given that they face an impossible Catch-22; the law will undoubtedly pass and attacking it after the fact looks self-serving and will disincentivize opposition voters, rather than Chavistas. The debate itself over LOPE has failed to gain much public traction given that it focuses on complicated electoral formulas and rules that most Venezuelans are unaware of. With much of the country on vacation and elections at least a year away, it appears unlikely that there will be much public protest, if any, until well after its passage. End Comment.  
CAULFIELD